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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INTERNATIONAL PAPER COMPANY,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB Nos. 78-25 and 78-27

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

These matters, the consolidated appeals from the issuance of thirty-four \$250 civil penalties for the alleged violations of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, at a formal hearing in Lacey, Washington on May 15 and 16, 1978. David Akana presided.

Appellant was represented by its attorney, Charles R. Blumenfeld; respondent was represented by its attorney, James D. Ladley.

Of the thirty-four appealed civil penalties, appellant challenged only nineteen at the hearing. Witnesses were sworn and testified;

1 exhibits were admitted. Counsel presented oral arguments.

2 Having heard the testimony, having examined the exhibits, and
3 having considered the contentions of the parties, the Pollution Control
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Pursuant to RCW 43.21B.260, respondent has filed with this Board
8 a certified copy of its Regulation I which we notice.

9 II

10 The appeals in these matters arise from wood-products mills
11 located at Amboy (Chelatchie), Washington and at Longview, Washington
12 which are owned and operated by appellant International Paper Company.
13 Each mill contains a hog fuel boiler which burns wood waste to produce
14 power and from which alleged smoke emissions have been released into the
15 atmosphere. The Chelatchie mill also includes a dusthouse from which
16 certain emissions are alleged to have occurred.

17 III

18 Section 4.02(a) of Regulation I provides that emissions of an air
19 contaminant darker in shade than No. 2 on the Ringelmann Chart, or the
20 equivalent opacity, for more than three minutes in any one hour are unlawful
21 Section 4.02(b) provides that:

22
23 When the gas stream is an emission from a
24 boiler using hogfuel, and an emission occurs which is
25 due to conditions beyond the control of the operator,
26 the emission may be darker than that designated as
27 No. 2 but not as dark as that designated as No. 3 on
the Ringelmann Chart for a period of not more than six
minutes in any one hour; provided that the operator shall
take immediate action to correct the situation.

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1 Respondent's inspectors observed emissions from appellant's hog fuel
2 boilers which exceeded the time and/or opacity limitations of Section
3 4.02(b) on November 3, 7, 16, 21 and December 5, 1977 (violations
4 A through H in Exhibit A-2). Appellant does not dispute the observations
5 but does question the validity of the provision which it contends is
6 unenforceable in light of more stringent state regulations (WAC 173-
7 400-040 and 070).

8 IV

9 Appellant does not dispute the observations taken on August 2,
10 1977 from its hog fuel boiler in Longview (violation I in Exhibit A-1)
11 but did question respondent's interpretation of WAC 173-400-070.
12 Such provision allows emissions, caused by conditions beyond the
13 control of the operator, to exceed 20% opacity for up to fifteen
14 consecutive minutes once in any four hour period. Here appellant,
15 after the first fifteen consecutive minutes, allowed emissions exceeding
16 20% opacity totalling more than three minutes, and all this occurring
17 within a one hour period, and in violation of WAC 173-400-040.

18 V

19 On November 2, 1977, respondent's inspector observed emissions
20 from appellant's hog fuel boiler at its Longview mill which exceeded the
21 standards of WAC 173-400-040 and Section 4.02 of Regulation I. (violation
22 J, Exhibit A-1.) The inspector made his observation at a point about
23 one-half mile from the plant, and not any closer, because he did not
24 want to stand on the plant property. Appellant contends that
25 greater distances make it harder to see the plume configuration and
26 to arrive at an opacity value. However, appellant's witness also testified

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1 that, as the distance from the plume is increased, the observed opacity
2 would appear to be about the same. We do not find that the distance
3 from the source materially affected the accuracy of the observation
4 taken on November 2, being violation J.

5 VI

6 Respondent's inspectors recorded observations of emissions from
7 appellant's hog fuel boilers at Chelatchie which exceeded the opacity
8 standard of WAC 173-400-040 on November 2, December 1 and 7, 1977. Two
9 observations (violations K and M, Exhibit A-1) were taken during
10 a heavy rain; two other observations (violations L and N, Exhibit A-1)
11 were taken during a snowfall. Appellant contends that the observations
12 made on each of the four occasions were erroneous because of the
13 weather conditions. We are not persuaded that the climatic conditions
14 materially affected the inspector's observations.

15 VII

16 On January 19, 1978, respondent's inspector observed brown
17 colored emissions from appellant's dust house at its Chelatchie mill.
18 (violation T, Exhibit A-1.) The observation was made from the
19 northwest corner of appellant's parking lot. From this vantage point,
20 the inspector could not see the dust house, but the plume was visible and
21 was of an opacity which exceeded the allowances of WAC 173-400-040.

22 VIII

23 Respondent's inspectors visited the Chelatchie mill on January 5,
24 16, 23 and February 3, 1978 and there recorded observations of emissions
25 from appellant's hog fuel boiler of such opacity which exceeded the
26 opacity standards of WAC 173-400-040 (violations Q, S, X, and DD,

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1 Exhibit A-1). Appellant's in-stack opacity monitor did not record
2 violations of the opacity standard on the dates and at the times
3 alleged, but rather, were well below the inspectors' observations.
4 The monitor was properly calibrated at all relevant times hereto, and
5 there is no dispute as to the accuracy of the meter readings at its
6 measuring point. Respondent is of the opinion that hog fuel boilers
7 cannot use such a monitor because of the large variation in the
8 physical form of the exhaust stream. Appellant's expert agrees that there
9 are limitations on the accuracy of the monitor but the limitations
10 occur only when there is a "detached plume," which would indicate
11 that the exhaust passes the monitor as a gas and thereafter condenses
12 and becomes visible upon cooling. It is not necessary to have a
13 visibly "detached plume" for an error to occur, however. All that
14 need occur is for the gas to pass by the monitor prior to condensing.
15 A detached plume, which did not occur here, is a visible manifestation
16 that such is occurring, but its absence is not conclusive when it does
17 not appear. Appellant did not show that its monitoring device measured
18 the opacity of the exhaust in a physical state as it would appear
19 after leaving the boiler stack.

20 The taking of observations in alleged violation DD, namely
21 through the windshield of a car and which occurrence is disputed,
22 at least cast some doubt on the accuracy of the reading such that we
23 are not persuaded that a violation should be found.

24 IX

25 For each of the above alleged violations, appellant was assessed
a \$250 civil penalty from which followed these appeals.

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X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

We conclude that appellant violated Section 4.02 of respondent's Regulation I as alleged in violations A through H of Exhibit A-2. We conclude, however, that Sections 4.02(a) and (b) are unenforceable in light of the more stringent state regulations. WAC 173-400-020.

WAC 173-400-070(2)(a) provides that:

. . . .
Hog fuel boilers shall meet all provisions of WAC 173-400-040 and WAC 173-400-050(1), except that emissions caused by conditions beyond the control of the owner or operator may exceed 20% opacity for up to 15 consecutive minutes once in any 4 hours provided that the operator shall take immediate action to correct the condition.

WAC 173-400-040 provides in relevant part that:

. . . .
(1) Visible emissions.
No person shall cause or permit the emissions for more than three minutes, in any one hour, of an air contaminant from any source which at the emission point, or within a reasonable distance of the emission point, exceeds 20% opacity except as follows:
(a) When the person responsible for the source can demonstrate that the emissions in excess of 20% will not exceed 15 minutes in any consecutive 8 hours.
. . . .

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1 WAC 173-400-050(1) provides that:

2
3 Combustion [sic] and incineration sources must meet
4 all requirements of WAC 173-400-040 above and, in
5 addition, no person shall cause or permit emissions
6 of particulate matter in excess of 0.10 grains per
7 standard dry cubic foot, except, (a) for sources
utilizing the combustion of wood for the production
of steam, no person shall allow or permit the emission
of particulate matter in excess of 0.20 grains per
standard dry cubic foot, as measured by procedures
on file at the department.

8

9 The foregoing provisions generally prohibit certain emissions and provide
10 exceptions to the general rule. Similarly, Section 4.02(a) of Regulation I
11 generally prohibits certain emissions and provides exceptions to the general
12 rule such as Section 4.02(b) (See Finding of Fact III). See also Section
13 4.02(d, h and i). From a comparison of the two regulatory systems, on the
14 facts of the alleged violations in these matters, we observe the following:
15 The state general rule is more stringent but appears to have a less stringent
16 exception and the authority's general rule is less stringent but appears to
17 have a more stringent exception. We conclude that each rule must be viewed
18 together with its respective exceptions, and not separately. Thus, a
19 conclusion that the state regulations are more stringent than a regional
20 authority's regulations necessarily affects the entire regulatory framework,
21 including the rule and its exceptions. Under the facts and circumstances
22 of this case, we hold the regional regulations less stringent than the
23 state regulations and thereby unenforceable. RCW 70.94.331(2)(b).
24 Accordingly, the violations and civil penalties assessed in violations
25 A through H of Exhibit A-2 should be vacated.

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1 II

2 Violation I of Exhibit A-1, having been conceded by appellant,
3 should be affirmed.

4 III

5 Appellant violated WAC 173-400-040 on the dates and times alleged
6 in violations J, K, L, M, N and T of Exhibit A-1. The violations and
7 civil penalties assessed therefor should be affirmed.

8 IV

9 Appellant violated WAC 173-400-040 on the dates and times alleged
10 in violations Q, S, and X of Exhibit A-1 and civil penalties assessed
11 therefor should be affirmed. Appellant was not shown to have violated
12 WAC 173-400-040 with respect to violation DD of Exhibit A-1. Accordingly
13 the civil penalty assessed for the violation should be vacated.

14 V

15 Any Finding of Fact which should be deemed a Conclusion of Law
16 is hereby adopted as such.

17 From these Conclusions the Board enters this

18 ORDER

19 1. The \$250 civil penalty assessed for each of the following
20 alleged violations is vacated:

21	A	November 21, 1977
22	B	November 3, 1977
23	C	November 7, 1977
24	D	November 16, 1977
25	E	November 3, 1977
26	F	November 3, 1977

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1 G November 16, 1977

2 H December 5, 1977

3 DD February 8, 1978

4 2. The \$250 civil penalty assessed for each of the following
5 violations is affirmed:

6 I August 2, 1977

7 J November 2, 1977

8 K December 1, 1977

9 L December 7, 1977

10 M December 1, 1977

11 N December 7, 1977

12 Q January 5, 1978

13 S January 16, 1978

14 T January 19, 1978

15 X January 23, 1978

16 DONE this 15th day of June, 1978.

17 POLLUTION CONTROL HEARINGS BOARD

18 
19 DAVE J. MOONEY, Chairman

20 
21 CHRIS SMITH, Member

22

23

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25

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